

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
700 E. SAN ANTONIO, SUITE 750
EL PASO, TX 79901

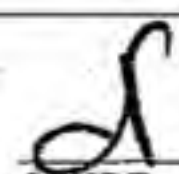
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In the matter of
GUTIERREZ SOTO, EMILIO

File [REDACTED]

DATE: Mar 4, 2019

- Unable to forward - No address provided.
- ✓ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041
- Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
700 E. SAN ANTONIO, SUITE 750
EL PASO, TX 79901
- Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
- Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.
- Other: _____


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IMMIGRATION COURT

FF

cc: DHS/ICE/OPLA/OFFICE OF THE CHIEF COUNSEL
11541 MONTANA AVE., STE. O
EL PASO, TX, 79936

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
700 EAST SAN ANTONIO AVENUE, SUITE 750
EL PASO, TEXAS 79901**

IN THE MATTER OF:

GUTIERREZ-SOTO, Emilio (Lead);
GUTIERREZ-SOTO, Oscar Emilio (Rider)

Respondents

IN REMOVAL PROCEEDINGS

FILE NO.: [REDACTED]

BIA REMAND

CHARGE: INA § 212(a)(7)(A)(i)(I)—*an immigrant not in possession of a valid entry document at the time of application for admission*

APPLICATIONS: Asylum under INA § 208
Withholding of Removal under INA § 241(b)(3)
Withholding and Deferral of Removal under Convention Against Torture

ON BEHALF OF THE RESPONDENTS:

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ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
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WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

This supplemental opinion addresses the issues raised by the Board of Immigration Appeals' (BIA) remand opinion dated May 15, 2018. As such, the underlying factual and procedural history are incorporated in their entirety and not reiterated herein.

I. Procedural History

On July 19, 2017, the Court denied the respondents' application for asylum, withholding of removal and protection under the Convention Against Torture (CAT), and ordered them removed to Mexico. See Decision of the Immigration Judge (IJ) (July 19, 2017). On August 21, 2017, the respondents, through counsel, filed an appeal of the Court's decision with the BIA, however, it was dismissed as untimely. On November 16, 2017, the respondent filed a Motion to



Reopen with the Court. Remand Exh. 1. The Court denied the Motion to Reopen, citing the motion failed to present material evidence of changed country conditions. *See* Remand Exh. 2. On November 19, 2017, the respondent also filed a Motion to Reopen with the BIA. Remand Exh. 3. On December 22, 2017, the BIA reinstated the respondents' appeal. *See* Decision of the BIA (Dec. 22, 2017). The BIA remanded the case to the Court for the entry of a new decision. *See* Decision of the BIA (May 15, 2018); Remand Exh. 6.

Specifically, the Board remanded the matter to permit the Court to address the new evidence proffered for the first time on appeal. *Id.* On October 22, 2018, an individual hearing on the merits of the respondents' application for asylum was held before the Court. Additionally, the Court reviewed new evidence submitted by the respondent, as directed by the Board.

II. New Evidence Considered

The Court incorporates all of the documentary and testimonial evidence previously in the record. As directed, the Court will now analyze the respondents' relief applications in light of his previously unavailable evidence that was proffered before the Board in support of the respondent's Motion to Reopen. The respondent also submitted documentary evidence for the Court's consideration after the Board's decision to reinstate the respondent's appeal. However, the Court will note that the Board's remand in this case is fairly narrow and instructs only that the Court consider the new evidence that was proffered on appeal. *See* Remand Exh. 6; *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978). The DHS opposes the new exhibits and additional witness based on the limited scope of the BIA remand. Remand Exh. 16 at 4.

A. Remand Exhibits¹

The Court carefully considered each of the following exhibits, even if not specifically discussed in this decision:

Remand Exhibit 1 is the respondent's Motion to Reopen submitted to the Court on November 16, 2017.

Remand Exhibit 2 is the Court's order denying the Motion to Reopen, dated December 4, 2017.

Remand Exhibit 3 is the respondent's Motion to Reopen and Motion to Expedite, submitted to the BIA on November 20, 2017.

Remand Exhibit 4 is the respondent's Motion to Stay Removal, submitted to the BIA on November 20, 2017.

¹ The documents that were received by the Court after the BIA's remand and not reviewed are: (1) Respondents' Proposed Witness List, filed October 1, 2018; (2) Respondents' Proposed First Exhibits in Support of Asylum Claim, filed October 1, 2018; (3) Respondents' Second Proposed Exhibits in Support of Asylum Claim, filed October 1, 2018; (4) Respondents' Proposed Third Exhibits in Support of Asylum Claim, filed October 10, 2018; (5) DHS's Objection and Motion to Exclude Proposed Exhibits and Witness List, filed October 9, 2018; (6) Respondents' Response to DHS Opposition, filed October 18, 2018; (7) Respondents' Amended Response to DHS Opposition, filed October 18, 2018; (7) letter from University of Missouri, received October 9, 2018; and (8) letter from Press Club, received October 9, 2018.

Remand Exhibit 5 is DHS's opposition to the respondent's Motion to Reopen, submitted to the BIA on December 14, 2017.

Remand Exhibit 6 is the BIA's Order reinstating the respondents' appeal, dated December 22, 2017.

Remand Exhibit 7 is a copy of a letter sent to the BIA from Scott Busby, dated February 5, 2018.

Remand Exhibit 8 is DHS' Motion for Summary Affirmance, dated March 12, 2018.

Remand Exhibit 9 is the respondent's appellate brief, submitted to the BIA on March 19, 2018.

Remand Exhibit 10 is the request to appear as Amici Curiae, submitted to the BIA on March 19, 2018.

Remand Exhibit 11 is the brief of Amici Curiae Journalist Organizations in support of respondents, submitted to the BIA on March 19, 2018.

Remand Exhibit 12 is the respondent's Motion to Supplement Asylum Claim or Motion to Remand, submitted to the BIA on March 22, 2018.

Remand Exhibit 13 is DHS' response to the Amicus Curiae Brief of Journalist Organizations, submitted to the BIA on April 9, 2018.

Remand Exhibit 14 is the respondent's response to Amicus Curiae, dated April 10, 2018.

Remand Exhibit 15 is the BIA's Order remanding the case for consideration of newly available, material evidence, dated May 15, 2018.

Remand Exhibit 16 is the respondent's written closing brief, dated November 27, 2018.

Remand Exhibit 17 is DHS's written closing brief, dated December 20, 2018.

B. Testimonial Evidence

On October 22, 2018, the respondent and Lynette Clemetson testified in open Court. Lynette Clemetson was cross-examined by DHS. Their testimony was incorporated into the decision in limited scope. The testimony is summarized to the extent it is relevant to the Court's analysis.



III. Relevant Factual Findings of the Court

A. Summary of Updated Testimony from Mr. Emilio Gutierrez Soto

Emilio Gutierrez-Soto (lead respondent) and his son, Oscar Emilio Gutierrez-Soto (rider respondent) (collectively the respondents) are natives and citizens of Mexico. Exh. 1.² The respondents are currently living in Ann Arbor, Michigan. They moved to Michigan after being released from detention in August 2018. The lead respondent, Emilio, attends the University of Michigan as a Knight-Wallace Fellow. The Knight-Wallace Fellowship is an academic year long fellowship primarily for international journalists. He attends various classes both as a student and as a guest. He participates in seminars organized by the Knight-Wallace Fellowship. The respondent occasionally writes and publishes various articles and recently wrote an article for the *Columbia Journalism Review*.

Even though it has been ten years since he lived in Mexico, he believes he is still in danger because he has been invited to speak with students from different parts of the U.S. and these students always ask about the corruption. The respondent has presented the students with statistics and studies that he believes proves the corruption exists. He testified that he believes he is more well-known now, than before he left Mexico, because of the nine national and international awards he has received since living in the U.S. He further believes the Mexican government is angry with him and that he continues to anger the government because he denounced the corruption in the Mexican government by publishing articles about the corruption. The respondent stated that the freedoms the press has in the U.S. is what has encouraged him to talk about the issues in Mexico.

The respondent fears returning to Mexico because he believes he would be murdered upon his return due to the corruption in the government. The respondent testified that there is terrible corruption in Mexico and the corruption starts with the president, through the members of the military, and police officers and believes the police would know his whereabouts and would have a target on his back. He stated that he has always thought he would become a murder statistic if he returns to Mexico. He believes that the Mexican government would not protect him if he went back to Mexico.

In addition, the respondent does not feel he could safely move to another part of Mexico. He testified that residents need two residency documents to get a voter's identification card and that you cannot move around without that card. He stated that once a resident gets the voter identification card the resident is placed in a database for national security. He believes the Mexican government already has him registered in this database for talking about the corruption in Mexico.

B. Summary of Testimony from Lynette Clemetson

Lynette Clemetson (Ms. Clemetson) testified in support of the respondent's application for relief. Ms. Clemetson is the director of the Knight-Wallace Fellowship for journalists at the

² Both the lead record of proceeding and the rider record of proceeding contain an Exhibit 1. The rider respondent's record of proceeding only contains one exhibit—the rest of the exhibits in this matter can be found in the lead respondent's record of proceeding. In both cases, Exhibit 1 is a Notice to Appear.

University of Michigan. She described the fellowship program as a prestigious program and only 18 to 20 accomplished journalists are invited into the program each year. Ms. Clemetson personally interviews and selects the candidates into the program. She testified that she is part of the respondent's case as a signer to the amicus brief that was provided to the BIA. She has reviewed some of the work the respondent had done as a journalist when he lived in Mexico. In her personal opinion, the respondent's journalistic credentials made him a good fit for the fellowship program.

Ms. Clemetson explained why some reporters leave their names off the bylines of some of the articles they write. She testified that it is a common practice in Mexico and other countries to do so for their safety. According to Ms. Clemetson's, she believes Mexico is known as one of the most dangerous places in the world for journalists and when journalists are killed it is done to send a statement to the rest of the press.

Ms. Clemetson testified that the respondent was known as a local and regional journalist. She articulated her belief that the respondent's profile is higher than when he left Mexico because he has been vocal in his criticism of Mexico and the violence against journalists. She believes that if the respondent is sent back to Mexico he will be a prime target for violence against him because he has been written about in several news sources nationwide.

IV. Findings of the Court Regarding Removability

Based on the respondents' admissions, testimony, and the documentary evidence of record, the Court finds that the respondents are natives and citizens of Mexico who applied for admission to the United States on or about June 16, 2008, and did not possess valid entry documents.

Accordingly, the Court sustains the charge of removability under INA § 212(a)(7)(A)(i)(I).

V. Legal Analysis and Findings of Law

A. Findings of the Court Regarding Credibility

Before determining whether the respondent meets the statutory criteria for the requested relief, the Court will address the credibility of the respondent. *Chun v. INS*, 40 F.3d 76, 79 (5th Cir. 1994). The respondent's application was filed after May 11, 2005; therefore, the provisions of the REAL ID Act govern. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). The Court may grant an application solely on the basis of credible testimony, without further corroboration. INA §§ 240(c)(4)(C), 208(b)(1)(B)(iii). But the Court will do this only if it is satisfied that the applicant's "testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate" that the applicant is eligible for the relief sought. INA §§ 240(c)(4)(B), 208(b)(1)(B)(ii). In determining whether the applicant has met the burden of proof, the Court "may weigh credible testimony along with other evidence of record." *Id.* When the Court determines that the applicant should provide evidence that corroborates otherwise credible testimony, "such evidence must be provided unless the [respondent] does not have that evidence and cannot reasonably obtain that evidence." *Id.*



In making credibility determinations, the Court must consider the totality of the circumstances and all relevant factors. INA §§ 240(c)(4)(C), 208(b)(3)(iii). The Court “may base a credibility determination on demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account.” *Id.* The Court may make a finding of adverse credibility if the alien’s testimony contains inconsistencies. See *Matter of J-Y-C-*, 24 I&N Dec. 260, 265 (BIA 2007). The testimony need not be inconsistent throughout nor do any inconsistencies need to relate to the heart of his claim for the Court to make an adverse credibility finding. *Id.*

1. Credibility of Respondent

The Court previously found the respondent to be not credible and does not presently find any reason to alter that finding. See Decision of the IJ at 24 (July 19, 2017). Accordingly, the Court continues to find that the respondent is not a credible witness.

The Court has rendered an adverse credibility determination. An adverse credibility finding, together with a lack of corroborating evidence, is fatal to an alien’s claim for relief. *Zhang v. Gonzalez*, 432 F.3d 339, 345 (5th Cir. 2005). Accordingly, the Court finds that the respondent cannot satisfy his burden of proof based upon his testimony alone. See INA § 240(c)(4)(B); *Chun*, 40 F.3d at 79 (“Without credible evidence, the BIA had no basis upon which to grant asylum or withhold deportation.”); see also *Zhang*, 432 F.3d at 345 (providing that an applicant seeking relief from removal must persuade the court that his evidence is credible).

Because the respondent’s testimony is weak, the need for corroborating evidence is greater. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998) (“[T]he weaker an alien’s testimony, the greater the need for corroborative evidence.”). The Court will now consider whether the respondent provided sufficient corroborative evidence to rehabilitate his lack of veracity and meet his burden of proof notwithstanding his weak testimony. See INA § 240(c)(4)(B); *Yang*, 664 F.3d at 586; *Y-B-*, 21 I&N Dec. at 1139.

Here, after meticulously reviewing the voluminous new evidence received from the respondent, the Court finds the respondent has still not provided the Court with sufficient fact-specific testimony or documentary evidence to establish that he suffered past persecution or has a well-founded fear of future persecution on account of his political opinion or particular social group. Specifically, the record lacks evidence that the respondent wrote any articles that denounce the corruption in Mexico. The respondent submitted a large number of articles that he had written over the years. Remand Exh’s. 4, 11. The Court counted three articles that pertain to the illicit activities of a small group of Mexican military members. Remand Exh. 4, Tab B, pgs. 15-16, 29-34. The new evidence presented still did not include an affidavit or statement from his former boss or from his friend that told him he was in danger.

Moreover, the respondent’s new testimony was centered on proving he is a journalist. He primarily discussed his fellowship at the University of Michigan. The witness he presented, Ms. Clemetson, also focused on his fellowship and that the respondent is a journalist. The fact that the respondent is a journalist was never an issue before the Court. The issue before the Court was

whether the respondent suffered from past persecution because of the articles he wrote while living in Mexico or whether he will suffer from future persecution upon his return to Mexico.

Accordingly, upon review of the totality of the record evidence regarding the respondent's claims, including the respondent's incredible testimony and deficient corroborating evidence, the Court finds that the respondent failed to meet his burden of establishing eligibility for relief or protection from removal. *See* INA § 240(c)(4)(C); *Yang*, 664 F.3d at 586. However, in the interest of providing a complete record, the Court will in the alternative address the merits of the respondent's claims. *See Matter of E-F-H-L-*, 26 I&N Dec. 319, 323 (BIA 2014); *Matter of J-F-F-*, 23 I&N Dec. 912, 922 (AG 2006).

2. Credibility of Witness

The Court finds that the respondent's witness, Lynette Clemetson, testified credibly and her sworn testimony will be given the appropriate evidentiary weight.

B. Asylum

1. Statement of Law

To establish eligibility for asylum, the respondent must prove that he is a refugee and that he merits relief in the exercise of discretion. *See* INA § 208(b)(1)(A); *Mikhael v. INS*, 115 F.3d 299, 303 (5th Cir. 1997). To establish that he is a refugee, the respondent must show that he is a person outside of his country of nationality who is unable or unwilling to return to that country, and unable or unwilling to avail himself of the protection of that country because (a) he has suffered past persecution, or (b) has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group (PSG) or political opinion. INA § 101(a)(42)(A); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 (1987). An applicant for asylum must demonstrate a "reasonable possibility" of persecution on account of a protected ground and "show that the threat of persecution exists for him country-wide." *Id.* at 440; *Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985), *overruled in part on other grounds*, *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987). Once an applicant demonstrates that he is a refugee, "an immigration judge may grant or deny asylum in the exercise of discretion." 8 C.F.R. § 1208.14(a); *see also Cardoza-Fonseca*, 480 U.S. at 424 (stating that the INA establishes "a broad class of refugees who are eligible for a discretionary grant of asylum, and a narrower class of aliens who are given a statutory right not to be deported to the country where they are in danger").

After careful consideration of the testimony and new evidentiary documentation, the Court will deny asylum. The Court finds as a matter of fact and law the respondent has not suffered past persecution in Mexico. The Court also finds that any injury suffered by the respondent was not perpetrated on account of any enumerated asylum ground (race, religion, political opinion, membership in a particular social group, or nationality). Likewise, the respondent has not established a well-founded fear of future persecution on account of a protected asylum ground.

2. Past Persecution

The respondent has not suffered past persecution. There is no universally accepted definition of "persecution." However, it is clear that it is more than mere discrimination. See *Tesfamichael v. Gonzales*, 469 F.3d 109, 119 (5th Cir. 2006). The BIA has defined "persecution" as "either a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Acosta*, 19 I&N Dec. at 222. In addition, "persecution" as used in INA § 101(a)(42)(A) clearly contemplates that harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome." *Id.* at 223. Persecution, however, does not include all treatment that is considered unfair, unjust, unlawful, or unconstitutional in our society. *Majd v. Gonzales*, 446 F.3d 590, 595 (5th Cir. 2006). "[P]ersecution requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty." *Eduard v. Ashcroft*, 379 F.3d 182, 187 n. 4 (5th Cir. 2004). Ultimately, the Court considers all the alleged persecutory acts taken together to determine whether the applicant suffered past persecution. See *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998). Fear of general conditions of violence within a country is not persecution. *Mogharrabi*, 19 I&N Dec. at 447; *Eduard*, 379 F.3d at 190.

Here, the respondent's claim of harm arises from two adverse experiences he had with members of the Mexican military: (1) a threat he received from General Vega that related to his writing of three articles about the Mexican military; and (2) a verbal threat "to behave" from the Mexican military when his house was searched in the middle of the night. The record shows that the respondent was threatened on two separate occasions by men who he believed were in the Mexican military. The Court finds, however, that neither of these events constitute past persecution. Verbal threats, unaccompanied by physical harm or other significant deprivation do not constitute persecution. *Tesfamichael*, 469 F.3d at 116. In February 2005, the respondent was summoned by a Lieutenant Colonel in the Mexican military, Alfonso Martinez Piedra (Lt. Colonel). See Remand Exh. 3. at 8. The Lt. Colonel informed him that General Alfonso Garcia Vega (General) wanted to meet him. *Id.* The respondent met with the General in front of the El Miami hotel, in downtown Ascensión, Mexico. *Id.* The respondent testified that the General hurled insults at him and questioned him about the three articles that he had written about the Mexican military. *Id.* The General threatened the respondent by saying, "you have written three articles, and there won't be a fourth one." *Id.* The respondent was able to leave, on his own accord, after the General was done "yelling" at him.

The second incident occurred in May 2008, when a large group of military men entered his home and searched it for drugs. *Id.* One man instructed the respondent "to behave" as they left his home. *Id.* The respondent affirmed the same men also searched his neighbor's house looking for drugs. See Decision of IJ at 18; Exh. 4A, Tab WW at 411-12. Moreover, the respondent conceded that the raids in his neighborhood were part of a generalized military action in his first testimony. *Id.* However, these two isolated incidents, the respondent endured, three years apart, do not meet the high standard of past persecution. The respondent did not sustain any injuries during either encounter. The respondent testified to no other harm or threats to him.

The Court does not discount the threats experienced by the respondent. Indeed, the 2015 Human Rights Report indicates that “journalists are sometimes subject to physical attacks, harassment, and intimidation due to their reporting.” Exh. 4B at 6. However, the respondent’s alleged past persecution consisted of one threat to stop writing about the military and one verbal warning “to behave” when alleged military men raided his house, in a “routine operation” looking for drugs. The respondent was never harmed, and the threats against him, standing alone, do not constitute past persecution. *Majd*, 446 F.3d at 595. Thus, the Court cannot find that the respondent was “persecuted” within the meaning of the Act. *See* INA § 241(b)(3)(A).

As such, the Court finds that the respondent’s past experiences do not rise to the level of past persecution.

3. Future Persecution

Where an alien is unable to demonstrate that he suffered past persecution, the alien may nonetheless be eligible for asylum if he demonstrates a well-founded fear that his life or freedom would be threatened in the future on account of his race, religion, nationality, membership in a particular social group, or political opinion. INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(b)(2)(i)(A). Thus, the protected ground must be at least one central reason for the feared persecution. INA § 208(b)(1)(B)(i); *see also Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010). A statutorily protected ground “cannot be incidental, tangential, superficial, or subordinate to another reason for harm.” *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009) (internal quotations omitted). A well-founded fear of persecution is shown when the alien demonstrates both that he subjectively fears persecution and that his fear is objectively reasonable. *Matter of J-R-R-A-*, 26 I&N Dec. 609, 611 (BIA 2015); *Eduard*, 379 F.3d at 189.

Here, the respondent testified that he fears persecution at the hands of the Mexican government or military if returned to Mexico. Assuming *arguendo* the respondent was found credible, the Court finds that the respondent has met the subjective prong because he expresses a genuine and credible fear of returning to Mexico because of his journalistic background. *Chen v. Gonzales*, 470 F.3d 1131, 1135 (5th Cir. 2006). However, the Court finds that his fears are not objectively reasonable. To meet the objective component, the alien must show either a reasonable possibility that he will be persecuted or a practice or pattern of persecution of a group of persons similarly situated on account of the protected ground to which he belongs. *Eduard*, 379 F.3d at 189 (citing *Mikhael*, 115 F.3d at 305). Specifically, the applicant must prove his association with a protected ground, a persecutor’s awareness or potential awareness of that association, a persecutor’s capability to punish the applicant, and a persecutor’s inclination to punish the applicant. *See id.*, 379 F.3d at 191.

Here, the respondent has alleged, but not shown that he would be singled out individually for persecution by either the Mexican government or military because of the work he has done as a journalist.³ The respondent fears that he will be punished by the Mexican government because

³ After pouring through the voluminous amount of articles provided, the Court counted only three articles that pertained to government or military corruption. Remand Exh. 4, Tab B, pgs. 15-17, 29-34; Remand Exh. 11. Furthermore, two articles are exactly the same with two different publication dates. Remand Exh. 4, Tab B, pgs. 15-

of his vocal denouncement about the widespread corruption in the government and military. *See* Remand Exh. 16 at 25. Additionally, the respondent testified that he has spoken about the corruption to university students at various gatherings and conferences since living in the U.S. *Id.* at 40. However, the respondent has not provided evidence of his various speaking engagements that show he has actively spoken out against the Mexican government. Even if the respondent had provided evidence of these vocal denouncements at public speaking engagements, the respondent did not provide evidence that the Mexican military even knew he was denouncing its corruption.

Moreover, the respondent was never harmed by the Mexican government or military when he lived in Mexico; thus, it is merely speculative that the respondent would be harmed by them if he returned. Furthermore, although the 2015 Human Rights Report indicates that journalists are sometimes subject to attacks, nothing in the record indicates that the respondent's notoriety as a journalist would outlast his decade long absence from Mexico or that the military would single him out. Exh. 4B at 6; *Acosta*, 19 I&N Dec. at 226; *Mogharrabi*, 19 I&N Dec. at 446. In fact, the evidence shows that Mexico has laws which protect free speech and the government generally respects these rights. Exh. 4B at 6. Additionally, Mexico has put legislation for the protection of journalists in place at both the federal and state levels. Remand Exh. 11 at 255. Consequently, the respondent has not shown that if he were to return to Mexico, anyone from the Mexican government or military would single him out for persecution. *Acosta*, 19 I&N Dec. at 226.

i. Relocation

Even if the respondent had established that his fear of future persecution was objectively reasonable, he has not shown that he cannot avoid persecution by relocating to another part of Mexico, or that it would be unreasonable for him to do so. *See* 8 C.F.R. § 1208.13(b)(1)(i)(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 32 (BIA 2012). The record shows that it would be reasonable for the respondent to relocate within Mexico to avoid his alleged persecutor. *See Eduard*, 379 F.3d at 189.

The respondent asserted that he cannot safely relocate to another part of Mexico because he believes the Mexican government already has him registered in the National Security database for talking about the corruption in Mexico. He testified that residents need two residency documents to get a voter's identification card and that you cannot move around without that card and once he applies for this card the government will know where he is. However, the respondent lived unharmed for three years between incidents. The General never threatened the respondent again. Even after the respondent's second threatening incident by the Mexican military, the respondent remained unharmed. The respondent argues that these men have long memories and will always be looking for him. However, the Court finds this speculative at best. The respondent has been gone from Mexico for over a decade and has not shown that the General has been continuously looking for him since his departure. Moreover, the respondent has not provided evidence that indicates the General is still actively in the military or even actively involved in corruption. Furthermore, the Court notes that the General's whereabouts are uncertain. The Court finds it doubtful that after a decade the General remains interested in the respondent.

17, 29-34. The rest of the articles the respondent wrote over the years as a journalist in Mexico were about social issues. Remand Exh. 11.

The respondent also asserts that he cannot relocate to another part of Mexico because of his continued denouncement of the corruption in the Mexican government and military. However, the respondent has not provided any evidence that he has continually denounced the government, nor any evidence that he is even known throughout Mexico, especially after being gone for over a decade.

Even assuming that the respondent could not continue living safely in Ascensión, Mexico, the respondent has not shown that he would face a reasonable likelihood of persecution in any other part of Mexico. An area where an applicant could relocate safely includes an area where the circumstances are "substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim." *M-Z-M-R-*, 26 I&N Dec. at 33. The respondent has not shown otherwise that other members of the Mexican military or government are out looking for him since he has been gone. Therefore, the respondent has not met his burden to show that he cannot relocate to avoid the harm he fears. *Id.* at 33.

ii. *Government Action*

Even if the respondent met his burden of proving he suffered past persecution or has a well-founded fear of future persecution, his claim for asylum would still fail because the record does not establish that the government was or would be unwilling or unable to control any of the alleged persecutors. The respondent must prove that the harm was or would be inflicted by either the government, or a non-government entity which the government is unwilling or unable to control. *See Acosta*, 19 I&N Dec. at 222; *see also Adebisi v. INS*, 952 F.2d 910, 912 (5th Cir. 1992). This can be shown through evidence that government actors committed or instigated the acts, evidence that government actors condoned the acts, or evidence of an inability on the part of the government to prevent the acts. *See Shehu v. Gonzalez*, 443 F.3d 435, 437-38 (5th Cir. 2006).

Here, the respondent filed a complaint with the Mexican National Commission of Human Rights (CNDH) and with the Public Prosecutor in February 2005. Remand Exh. 4, Tab D at 49. Although the investigation did not move as quickly as the respondent would have liked, an investigation was opened and conducted. In January 2006, correspondence was sent to the respondent stating that: "1) the Inspection and Internal Comptroller General of the Army and Air Force carried out an investigation the result of which no military personnel were found to be responsible for the incident; 2) a memorandum was circulated by the Comptroller General of the Army to the Command of the Fifth Military Zone instructing them to avoid acts that may contain intimidation and interference with freedom of expression; and 3) the Prosecutor for Human Rights of the Attorney General's office of Chihuahua accepted the CNDH's correspondence regarding conciliation..." *Id.* at 53. Furthermore, in the respondent's first testimony he stated that "he did not know the details of the [conciliation] agreement, but consented to it anyway, concluding the matter." *See* Decision of IJ at 13. The respondent did not write any articles about the military after the conciliation agreement. *Id.* at 17.

After the second incident in May 2008, the respondent filed a second complaint with the CNDH's office. Remand Exh. 4, Tab D at 53. Soon thereafter, the respondent left to the U.S. In October 2009, an attorney from the CNDH office contacted the respondent to meet with him. Decision of IJ at 13; Remand Exh. 4, Tab D at 55. The attorney met with the respondent in El

Paso, Texas and twice offered him protection of bodyguards if he returned to Mexico, which the respondent refused both times. *Id.*

A review of the 2015 Human Rights Report shows that the Mexican government is taking some measures to abate corruption. Remand Exh. 11 at 255; Exh. 4B at 9. The 2015 Human Rights Reports acknowledged that that “[t]here were numerous reports of government corruption during the year,” however, by law all “new applicants for federal law enforcement jobs must pass a vetting process.” Exh. 4B at 9. Furthermore, according to the United Nations Human Rights report, Mexico has put legislation in place that is dedicated to protecting journalist at both the federal and state levels. Remand Exh. 11 at 255. While the conditions in Mexico are far from ideal, the evidence submitted by the respondent do not indicate that the government would be unable or unwilling to control any corrupt police officers, or other individuals, threatening the respondent.

Accordingly, the respondent has not demonstrated that the Mexican government is unwilling or unable to protect him.

4. On Account of

An applicant for asylum must also show that the persecution was “on account” of his race, religion, nationality, membership in a particular social group (PSG), or political opinion. *See* INA § 101(a)(42)(A). Specifically, the applicant must establish that an enumerated protected ground “was or will be at least one central reason” for the alleged persecution. INA § 208(b)(1)(B)(i); *see also Adebisi*, 952 F.2d at 913. The respondent claims he was persecuted and fears future persecution on account of an imputed political opinion and membership in the proposed PSG of “former Mexican reporter who criticized the Mexican Military.” R’s Mot. to Reopen at 10.

i. Political Opinion

The Court finds that the evidence does not establish that the respondent would be persecuted on the protected ground of his political opinion. An applicant seeking asylum or withholding of removal due to a fear of persecution based on political opinion must show that (1) he holds a political opinion, (2) his political opinion is known to his persecutors, and (3) the persecution has been or will be on account of his political opinion. *Matter of A-E-M-*, 21 I&N Dec. 1157, 1175 (BIA 1998) (citing *I.N.S. v. Elias-Zacarias*, 502 U.S. 478 (1992)); *see also Sharma v. Holder*, 729 F.3d 407, 412 (5th Cir. 2013). In some circumstances, opposition to state corruption may provide evidence of political opinion or give a persecutor reason to impute such beliefs to a person. *Matter of N-M-*, 25 I&N Dec. 526, 528 (BIA 2011). When an applicant makes a claim of persecution based on political opinion, he is required to provide evidence that the claimed political group exists and is recognized as such in the relevant society. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 244 (BIA 2014). “Demonstrating such a connection requires the alien to present ‘specific, detailed facts showing a good reason to fear that he or she will be singled out for persecution’ ” on account of such an opinion. *Faddoul v. INS*, 37 F.3d 185, 188 (5th Cir. 1994).

Here, the respondent asserts that he will be targeted because of his political opinion against the Mexican government if he returns to Mexico. He has spoken out against the government about

his opposition to the widespread Mexican government corruption. Remand Exh. 9 at 11. The respondent contends that he will be harmed upon his return as a consequence of his “vocal denounce[ments] of the corruption of the Mexican military and the Mexican government prior to his entry to the U.S. through his publications.” Remand Exh. 5 at 10. In 2005, the respondent wrote three articles about the Mexican military and their illicit affairs. Remand Exh. 4, Tab B, at 15; Remand Exh. 11 at 233. The respondent alleges that any opposition to the Mexican military is perceived as a threat to all military members. He testified that he had the freedom to decide what to report on, and he routinely reported on social events, police, and political events. The first two articles written described an incident that had occurred between military members and hotel guests. *Id.* The General verbally assaulted the respondent after the articles were published. The General warned that the respondent “would not write another article.” Remand Exh. 9 at 18. However, the respondent originally testified that no specific threats were made.

His persecution on account of vocally denouncing the corruption of a group of Mexican military members does not qualify as persecution on account of a political opinion. *Matter of N-M-*, 25 I&N Dec. at 526 (“Where the alien threatens to expose the corrupt acts of rogue officials acting without the support of the governing regime, it seems less likely that the act would be perceived as politically motivated or politically threatening.”). The respondent provided no evidence that his statements, his purported denouncement against the Mexican government about widespread Mexican government corruption have been perceived as a political opinion. See *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 351 (5th Cir. 2002).

Even assuming that the respondent established his political opinion, he has not established a nexus between his alleged opinion and the previous incidents or any future harm. The situation described reveals that the General threatened the respondent not because of his political opinion, but because he had interfered with his illicit activities. The record does not demonstrate the General was interested in the respondent other than for personal retribution. See *C-T-L*, 25 I&N Dec. at 349 (holding that the alien had not established a nexus where police officers threatened him, not because of a protected ground, but because “he had interfered with their private money-making scheme”). The respondent did not provide other testimony or evidence, direct or circumstantial, which would warrant the Court to hold that the General harmed him or will harm him in the future on account of his general opposition to military corruption.

Further, the respondent has not shown that it was the same military men in both incidents, that occurred three years apart, or that they were targeting him because of his political opinion. See *Matter of D-R-*, 25 I&N Dec. 445, 454 (BIA 2011) (explaining that the IJ may make reasonable inferences from direct and circumstantial evidence in the record as a whole and is not required to accept an alien’s account where the record supports other plausible views of the evidence). In fact, the evidence shows that his neighbors’ houses were also searched as an ongoing operation against drugs. Remand Exh. 4, Tab B at 23; Exh. 4A, Tab WW at 411-12. Thus, the respondent has provided no evidence that any of the men targeted him because they were “aware of, and hostile to,” his political opinion of being against corruption. See *Matter of A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018) (“When the alleged persecutor is not even aware of the group’s existence, it becomes harder to understand how the persecutor may have been motivated by the victim’s membership in the group to inflict the harm on the victim.” (citation omitted)). Accordingly, the respondent has not shown that, assuming that he holds a political opinion and the men knew of that opinion, that

his past persecution was or any future persecution will be on account of that political opinion. See INA § 101(a)(42)(A).

As such, the Court finds that that any harm he suffered or could suffer would be for reasons incidental and untethered to any alleged political motivations and has not demonstrated the requisite nexus between any alleged harm and his claimed political opinion. See *Ontunez-Tursios*, 303 F.3d at 351.

ii. *Particular Social Group*

The respondent alleges that he would be persecuted due to his membership within a particular social group, to wit: “former Mexican reporter who criticized the Mexican Military.” R’s Mot. to Reopen at 10. However, the respondent has failed to produce sufficient evidence of a well-founded fear of future persecution based on his proposed social group. *Tesfamichael*, 469 F.3d at 113.

When the persecution is based on membership in a PSG, the applicant must show that the proposed social group is one that is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. See *A-B-*, 27 I&N Dec. at 316; *M-E-V-G-*, 26 I&N Dec. at 237. In order to establish immutability, the applicant must demonstrate that the members of the group share a common characteristic that they “either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Acosta*, 19 I&N Dec. at 233. To be particular, the group’s boundaries must be ascertainable and membership in the group cannot be too vague, uncertain, or subjective. *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007). This requirement “considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way.” *A-B-*, 27 I&N Dec. at 330. A group is socially distinct when the society in question perceives or recognizes the persons sharing the particular characteristic as constituting a group. *W-G-R-*, 26 I&N Dec. at 217.

The respondent’s purported particular social group is immutable. *M-E-V-G-*, 26 I&N at 227. One’s former occupation is immutable as it is a characteristic beyond one’s capacity to change. *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988). However, one’s employment, including a taxi driver or government employee, does not amount to an immutable characteristic because a person may change jobs. *Acosta*, 19 I&N Dec. at 234. While unfortunate, that the respondent may have to change jobs, “the concept of a refugee simply does not guarantee an individual a right to work in the job of his choice.” *Id.* at 233. The respondent in *Fuentes* claimed fear arising from his status as a former member of the Salvadoran national police. *Id.* Although the Board in *Fuentes* did not find the respondent eligible for asylum, the Board did acknowledge the immutability of the respondent’s status as a former member of the national police. *Fuentes* at 662. As such, due to the immutability of one’s former occupation, the Court finds that the respondent’s status as a former journalist is a characteristic that he cannot change and is thus immutable.

Nevertheless, even though the respondent’s purported social group is immutable, his social group, defined as such, is uncertain, too vague, and fails to meet the legal requirement for particularity. See *A-M-E- & J-G-U-*, 24 I&N Dec. at 69. His suggested social group of former

Mexican journalists are too large and diverse a collection of individuals making his group too broad and encompassing too many variables to comprise particular social groups for immigration purposes. *Mwembie v. Gonzales*, 443 F.3d 405, 414–15 (5th Cir.2006) (noting that to establish membership of particular social group, applicant must show member of group sharing common immutable characteristic); *see also Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576–77 (9th Cir.1986) (holding class of young, working class, urban males too all-encompassing to meet requirements of *particular* social group).

Importantly, “a social group may not be defined exclusively by the fact that its members have been subjected to harm.” *A-B-*, 27 I&N Dec. at 330-31 (internal citations omitted). Here, whereas the General may have regarded the respondent as distinct because the respondent had written about his unit’s illicit activities, the evidence fails to establish that Mexican society regarded the respondent’s status as a journalist as a distinct social group. *Id.* at 330 (saying a particular social group should not be defined “from the perspective of the persecutor”). The respondent’s fear was based on his individual response to the General’s verbal assault, not on persecution aimed at his membership in a group. *See Elias-Zacarias*, 502 U.S. at 483. Therefore, the respondent has not met his burden to demonstrate that he was a member of a particular social group within the meaning of the Act.

As the respondent is not a member of a cognizable social group and does not possess a legitimate political opinion, no nexus exists between the respondent’s alleged harm and any protected ground. Accordingly, the respondent cannot demonstrate that he suffered past persecution or that he has a well-founded fear of future persecution on account of a protected ground. Therefore, the respondent has failed to establish eligibility for asylum.

5. Discretion

Asylum may be denied as a matter of discretion, even if the applicant is statutorily eligible. *See* INA § 208(b)(1)(A). In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered under the totality of the circumstances. *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987); *Matter of H-*, 21 I&N Dec. 337, 347 (BIA 1996). If respondents can demonstrate severe past persecution that forms a compelling reason for their unwillingness to return or that there is a reasonable possibility that they may suffer other serious harm, the Court may grant humanitarian asylum. 8 C.F.R. § 1208.13. Here, the Court cannot find that the respondents’ circumstances are sufficiently severe or compelling to warrant a favorable exercise of discretion in the present case.

Accordingly, the Court will deny the respondent’s application for asylum. *See* INA § 208(b)(1); *see also* 8 C.F.R. § 1208.13(a)-(b)(1), (2).

C. Withholding Under Section 241(b)(3) of the INA

For the reasons previously discussed, the Court finds that the respondent has failed to prove that he warrants a grant of asylum, so it necessarily follows that he has likewise failed to meet the higher burden of proving that he warrants a grant of withholding of removal. *Cardoza-Fonseca*, 480 U.S. at 448-50.



Accordingly, the Court will deny the respondent's application for withholding of removal under INA § 241(b)(3).

D. Relief Pursuant to the Convention Against Torture

With regard to the respondent's application for relief under the CAT, the Court found that the respondent had not demonstrated that he will be personally at risk of torture upon removal to Mexico or that the Mexican government would consent, acquiesce or exercise willful blindness to any hypothetical torture of the respondent. *See* Decision of the IJ, p. 32 (July 17, 2017). The Court found that the new evidence the respondent offered to prove that he will be targeted because he is a journalist unconvincing and, thus, that he not met his high burden of demonstrating that it is more likely than not that he will be tortured, under the legal definition, if removed to Mexico. *Id.* Furthermore, the BIA has pointed to no specific errors in the Court's denial of relief under the CAT and, as such, the Court finds no reason to disturb this holding.

The Court will therefore deny the respondent's application for protection under the CAT.

VIII. Conclusion

On remand, the respondent failed to demonstrate that he suffered past persecution or has a well-founded fear of future persecution on account of a protected ground. Additionally, the respondent failed to show that it is more likely than not that he would be subjected to torture upon his return to Mexico. Accordingly, the respondent's applications for asylum, withholding of removal, and protection under the CAT are denied.

Based on the foregoing, the following orders shall be entered:

IT IS HEREBY ORDERED that the lead respondent's application for asylum pursuant to INA § 208 be **DENIED**.

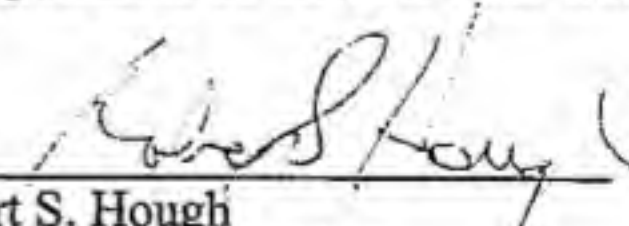
IT IS FURTHER ORDERED that the rider respondent's application for asylum, as a derivative under INA § 208(b)(3)(A), be **DENIED**.

IT IS FURTHER ORDERED that the lead respondent's application for withholding of removal pursuant to INA § 241(b)(3) be **DENIED**.

IT IS FURTHER ORDERED that the lead respondent's request for protection under the Convention Against Torture be **DENIED**.

IT IS FURTHER ORDERED that the respondents be **REMOVED** from the United States to **MEXICO**.

2/28/19
Date
El Paso, Texas


Robert S. Hough
U.S. Immigration Judge